THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.19489 AND 22666 OF 1995

BETWEEN:

W.P.No.19489 of 1995

M/S.Praga Tools Ltd.,

…petitioner

Vs.

The Chairman-cum-Presiding Officer,Labour Court, Hyderabad and others

.. Respondents

W.P.NO.22666 OF 1995

K.Uday Bhaskar Rao

..Petitioner

vs.

The Additional Industrial Tribunal-cum-Addl.Labour Court, Hyderabad rep. By Presiding Officer and a nother

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.19489 & 22666 OF 1995

COMMON ORAL ORDER

These are connected writ petitions. W.P.No.19489 of 1995 is by the employer and W.P.No.22666 of 1995 by the workman. Both challenge the award of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, dated.18-04-1995 in I.D.No.9 of 1994. The parties are referred to as employer and workman for convenience.

The workman filed an application under Sec.2-A(2) of the Industrial Disputes Act,1947(for short "the Act") assailing his termination and seeking reinstatement with back wages. According to the workman he was appointed as a casual Chemist in the employer's organisation at Balanagar on 16-10-1988; worked continuously as such till 21-09-1993, on which date his services were terminated without notice or payment of compensation. The workman contended that he was appointed as a casual Chemist against a regular vacancy and was paid wages once a month besides incentives including bonus along with other workmen. He also claims to have been covered by E.S.I and P.F schemes and that the Quality Control and Assurance Department had recommended his case for regular appointment. He asserted that his termination on 21-09-1993 was in violation of the provisions of Sec.25-N of the Act. He

also asserted that his junior one S.Suresh was continued and therefore he is entitled to reinstatement with back wages.

The employer resisted the reliefs claimed by the petitioner and contended that as the petitioner is a casual worker there is no question of termination, discharge, dismissal; retrenchment or removal and he is not a workman as defined under Sec.2(s) of the Act. The employer also contended that the work of a casual Chemist commences in the morning and ends by the evening. There is no continuity of service. The employment on any day depends upon the exigency or availability of work. The employer also pleaded that there is a fixed and determined procedure in the Company for recruitment of permanent employees. The petitioner is not entitled to regularisation. The employer also urged that it was running on heavy and sustained losses, there was surplus manpower to the extent of 295 employees and there is a ban on recruitment and in the circumstances the petitioner is not entitled to any relief.

On a consideration of the evidence on record including the oral testimony on behalf of the workman (WW.1) and Exs.W-1 to W-7, the oral evidence on behalf of the employer of the Personal Manager of the Company (MW.1) and the documents Exs.M.1 and M.2, the labour Court passed an award datd.18-04-1995 in I.D.No.9 of 1994. The Labour Court held that in the two units of M/S.Praga Tools, one at Balanagar and another at Kawadiguda, there are two Lab Assistant posts, also called Chemist posts, one assigned to Balanagar and the other to Kawadiguda. In Balanagar one P.Suresh was working and his services were terminated without following the provisions of Sec.25-F of the Act. P.Suresh raised a dispute under Sec.2-A(2) of the Act in I.D.No.68 of 1985. By the order dated.21-02-1986 an award was passed directing reinstatement and grant of

other reliefs to P.Suresh. The employer thereupon filed W.P.No.7127 of 1986, which was dismissed by this Court on 02-12-1987. Eventually P.Suresh was reinstated on 21-08-1993.

During the period of illegal termination of P.Suresh, the workman was engaged on daily wages from 16-10-1998. On these facts and on considering the rival contentions, the labour Court concluded that as the workman is seen to have worked for a period of 240 days during the preceding 12 calendar months i.e., between 21-08-1992 to 21-08-1993 the petitioner is entitled to the benefits under Sec.25-N of the Act and therefore in terms of Sec.25-N(viii) a retrenchment effected without the prior permission of the Central Government is illegal and the workman would be entitled to all the benefits as if no notice was giving for his disengagement. The lower Court held that in the circumstances though the workman should be entitled to reinstatement with continuity of service and back wages, the employer-Company which is a Government company is running on losses in Balanagar unit there is already a Chemist working in his own post and therefore the petitioner has to be kept idle, if he is to be reinstated and this will cause further loss to an already deeply ailing company. In the circumstances the Labour court directed that the respondent should pay the petitioner wages for three years as compensation in lieu of all the reliefs to which he is entitled and that the wages so payable shall be calculated at the minimum daily wages prescribed by the Government for a casual Lab Assistant as on the date of the award of the Labour Court.

The employer's writ petition (W.P.No.19489 of 1995) is against by the three years wages directed to be paid to the workman. The workman's writ petition (W.P.No.22666 of 1995)

is on the grievance that the relief of reinstatement and payment of back wages was declined despite a categorical finding of the invalidity of the termination dated. 21-08-1993. This is the integration between the two writ petitions.

On behalf of the employer Mr.P.Nageswara Sree, the learned counsel reiterates the same contentions as have found disfavour in the labour court. It is contended that as the workman was employed on daily wages, his is a contract of daily employment that commences and ends everyday. He is neither entitled to regularisation nor reinstatement with continuity of service. In the circumstances the award of the labour Court directing payment of wages computed for a three years period is invalid.

On behalf of the workman Sri B.G.Ravindra Reddy, the learned counsel contends that in view of the unequivocal finding of the labour court that the workman's termination was in transgression of the provisions of Sec.25-N of the Act, and in view of the provisions of Sec.25-N(iii) the only course open to the Court was to direct reinstatement into service with all benefits flowing consequent thereto.

In the considered view of this Court neither of these contentions commend acceptance and in the circumstances of the case.

Notwithstanding the petitioner's employment on daily wages there is a finding of fact by the labour Court on record which finding is not disputed by the employer, that the petitioner has put in 240 days of continuous service in a calendar year during 21-08-1992 to 21-08-1993. The petitioner is therefore entitled to the benefits of Sec.25 but as the employer is an industry employing more than 100 workmen the provisions of Chapter-V(B) are applicable and therefore the applicable

provision is Sec.25-N. Indisputably therefore the employer could not have terminated the service of any workman who was entitled to the benefits under Sec.25-N unless previous approval of the appropriate government, in this case the Union Government, is obtained. Admittedly no such prior permission of the Central Government was obtained by the employer before terminating the workman from service. As a consequence the disengagement of the petitioner on 21-08-1993 amounts to retrenchment contrary to the provisions of Sec.25-N and the workman in the normal circumstances, be entitled to reinstatement into service as though there was no disengagement on 21-08-1993. The workman preferred to raise the dispute very shortly after his termination, by way of I.D.No.9 of 1994. An award was passed on 18-04-1995. The normal consequence of violation of Sec.25-N of the Act is that the workman would be entitled to reinstatement with about 20 months of wages payable to him from August-1993 to April-1995 and thereafter it was open to the employer to disengage the petitioner in accordance with law. In view of the uncontested assertion of the employer that it was running in persistent and substantive losses and was already mulcted with having to reinstate Sri P.Suresh, it is quite conceivable that the employer would have obtained the permission of the appropriate Government for disengaging a Chemist, if it had applied. Further more as there was only one post of Chemist in Balangar unit and the vacancy had arise, on account of the illegal termination of Mr.P.Suresh the petitioner was engaged in a vacancy that occurred on account of the illegal termination of P.Suresh. Mr.P.Suresh has already assailed his termination. There was thus no clear vacancy in the post of a Chemist to which the petitioner could have been appointed.

The daily wage appointment of the workman is therefore what it is stated to have been-- a daily wage appointment.

Coming to the case of the employer despite the unequivocal legislative direction in Sec.25-N of the Act, for some casual, irrelevant reason the employer chose to disengage the petitioner from service without following the mandatory provisions of Sec.25-N. As a consequence the workman suffered a legal injury namely, violation of the statutory rights to which he was entitled.

Taking a pragmatic view of the legal injury suffered by the workman and the extremely morbid financial state of the employer, the labour Court on a balanced exercise of its quasi-judicial discretion and in the plenitude of discretion available under Sec.11 of the Act, directed that the employer pay wages for three years as compensation to the petitioner in lieu of all the injury that the petitioner suffered as a result of his illegal termination.

In the considered view of this court no case is made out for grant of relief to either the employer or the workman, in the circumstances above. It is represented at the Bar that pursuant to the conditional interim direction granted in the employer's writ petition the employer had deposited 50% of the compensation as directed by the labour Court to the Credit of I.D.No.9 of 1994.

In the totality of circumstances the writ petitions are disposed of directing the employer-M/S.Praga Tools Limited-petitioner in W.P.No.19489 of 1995 and the 2nd respondent in W.P.No.22666 of 1995 to pay the workman-K.Udaya Bhaskara Rao the compensation amount as directed by the Labour court after taking credit for the amounts already deposited, if any, to the credit of I.D.9 of 1994 within a period of thirty (30) days from the date of receipt of a copy of this order. In

the circumstances there shall be no order as to costs.

GODA RAGHURAM,J

19th DECEMBER 2006
***TSNR**